



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,440	12/14/2001	James J. Bancroft	047329-5001	3710

23345 7590 08/25/2005

MCGUIREWOODS, LLP
1750 TYSONS BLVD
SUITE 1800
MCLEAN, VA 22102

EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
----------	--------------

3764

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

82

Office Action Summary	Application No. 10/014,440	Applicant(s) BANCROFT, JAMES J.	
	Examiner Michael Brown	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 27-35 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 and 27-35 is/are allowed.
- 6) ☒ Claim(s) 8-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Flowers.

MB Flowers discloses in figures 1-5 a mouthguard comprising a frame member 16, a bite tab 22, a division 46 that is a narrow opening, a plurality of divisions (46, 48), that divides the bite tab into at least three section (one section is where reference number 22 is in fig. 3, the second section is between 46 and 48 and the third section is on the opposite side of 48), the divisions include at least one narrow opening 48, the bite tab includes a posterior portion (fig. 3), that the division (the portion of 22 at reference number 22, fig. 3), is located in, the division is located in the anterior of the bite tab (fig. 3, the anterior portion is being interpreted as any portion of 22 that extends in front of the center line of 22), a groove 13 in the front portion of the body and an air hole 32.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flowers in view of Bancroft.

Flowers disclose in figures 1-5 a mouthguard, substantially as claimed. However, Flowers doesn't disclose a helmet strap attachment coupled to the frame. Bancroft teaches in figure 1 a helmet strap attachment 20 coupled to the mouthguard. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the helmet strap attachment as taught by Bancroft could be incorporated into the mouthguard disclosed by Flowers in order to use the strap attachment to attach the mouthguard to an object (helmet).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flowers in view of Croll.

Flowers disclose in figures 1-5 a mouthguard, substantially as claimed. However, Flowers doesn't disclose the bite tab extending beyond the end portions of the frame. Croll teaches in figure 1 a mouthguard comprising a bite tab 15 that extends beyond the ends of a frame 11. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the bite tabs disclosed by Flowers could be fabricated to extend beyond the ends of the frame as taught by Croll. The bite tabs extending beyond the ends of the frame provide additional portions for supporting the teeth in the posterior portion of the user's mouth.

Allowable Subject Matter

Claims 1-7 and 27-35 are allowed.

Conclusion

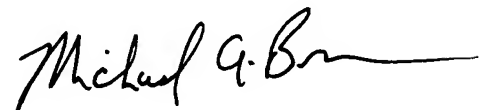
Art Unit: 3764

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
August 16, 2005



MICHAEL A. BROWN
PRIMARY EXAMINER